

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-144

In the Matter of

FM Allocation Rules of Part 73.
Subpart B. FM Broadcast Stations

FIRST REPORT AND ORDER

Adopted: December 29, 1986 ; Released: February 3, 1987

By the Commission:

INTRODUCTION

1. The Commission has before it the *Notice of Proposed Rule Making* ("Notice")¹ proposing to review and correct inconsistencies in certain FM technical rules. The *Notice* focused on issues raised as a result of Commission action in Docket No. 80-90.² Resolution of some issues will yield immediate public benefit. These issues are also easily disposed of, and their resolution reflects substantial support from commenters. The Commission adopts this *First Report and Order* to realize the benefits from resolving these issues as expeditiously as practicable. We will address the other issues in a subsequent document.³ Specifically, the Commission action herein pertains to (1) reserved Class A channels and (2) designation of station classes by zones. Several parties submitted comments in response to the *Notice*. Those whose comments are relevant to the issues discussed herein are noted in Appendix A to this *First Report and Order*.

COMMENTS

2. *Reserved Class A Channels.* As set forth in the *Notice*, 20 of the 80 commercial FM channels have been reserved exclusively for use by Class A stations, while the remaining channels have been reserved for Class B or C stations. Responding to the need for increased FM service, the Commission in Docket 80-90 permitted Class A stations to operate on all 80 commercial FM channels. It did not, however, remove the reservation in Section 73.206(a) of its Rules limiting 20 channels exclusively for Class A use. Those channels were originally reserved to ensure the availability of FM allotments to small communities. Since implementation of its Docket No. 80-90 action, however, the Commission has found that retention of the reservation on those 20 channels unnecessarily restricts the ability of some Class A stations to upgrade their facilities. Further, the need to foster local FM service to small communities by means of the reservations is no longer necessary. Thus, the *Notice* proposed to allow higher classes of stations on the 20 Class A channels consistent with the distance separation requirements of Section 73.207.⁴

3. Comments pertaining to the Class A channel reservations of Section 73.206(b) overwhelmingly favor elimination. Many were from Class A operators who note that elimination will enable them to upgrade their facilities. Commenters note that some stations cannot take advantage of the recently adopted procedure in Docket No. 85-313.⁵ It is argued that even where upgrades are otherwise feasible, it would be more convenient and less time-consuming to upgrade on the existing, as opposed to adjacent, channels. Pointing to the growth and maturity of FM service, some supporting commenters argue that it is no longer necessary for the Commission to foster such service to smaller communities. Others note a potentially more efficient use of the spectrum and a more efficient and equitable distribution of radio service.

4. Both National Public Radio (NPR) and Corporation for Public Broadcasting (CPB) express concern about the effects of Class A channel dereservation on public radio. NPR asserts that recent Commission action, such as its TV Channel 6 policy,⁶ has somewhat limited use of the noncommercial educational spectrum. This commenter indicates that so long as operations on Channel 221 are restricted to Class A use, public stations on Channels 218-220 can operate with more power and higher antenna than they could if higher class operations are allowed on Channel 221. According to NPR, this is especially significant in light of pressures on public stations to move toward the upper end of the NCE band because of the impact of TV Channel 6 operations.

5. *Blanket Increase in Class A Power and Height.* Some commenters addressing the proposal to remove the Class A channel reservations of Section 73.206(a) indicate that the Commission should do even more to promote enhanced service from existing Class A stations. While encouraging dereservation as a step in the right direction, they argue that due to minimum spacing requirements upgrading is not available to all Class A operators. Rather, they contend that Class A operators and the public would be better served by providing for blanket increases in allowable operating power and antenna height. For example, Clear Channel Communications, Inc. suggests Class A limits be increased from 3kW and 100 meters to 4kW and 125 meters HAAT.

6. *Designation of Station Classes by Zones.* As set forth in the *Notice*, the FM Table of Allotments, Section 73.202(b) of the Rules, lists channels and classes of stations by community. The class of a vacant channel specified in the Table depends upon the FM zone as determined by a community's geographical coordinates. Thus, a higher class channel allotted to a community in Zone I is either Class B1 or B, and one allotted to a community in Zone II is either Class C2, C1 or C.⁷ However, Section 73.206(c) of the Rules provides that for a licensed station, the class designation is based on the zone in which its transmitter is located. The Commission proposed to remove the reference to transmitter location in Section 73.206(c) and to provide that the facilities of any new station conform to the class listed in the Table for its community. Stations located near zone boundaries would then have been allowed to relocate transmitters provided they met the distance separation requirements for their class as determined by the zone in which their communities were located. For existing stations whose transmitter sites determine class, the Commission proposed to adjust the Table to reflect authorized classes as of the date of the *Notice*. The Commission invited comments

on its proposal as well as the questions of whether a grandfathered Class C station serving a community in Zone II would retain its status or be downgraded if it relocated its transmitter into Zone I.

7. Examination of comments responsive to this proposal does not indicate strong support. Some proponents question the continued need for zones at all. Those in favor suggest that stations and audiences in zone border areas would benefit from adoption of the proposal. In this regard, at least one party notes that much of the zone border area is mountainous and sparsely populated with communities far apart and requiring high transmitter sites to minimize shadowing. According to proponents, due to the limited availability of transmitter sites, a station licensed to a Zone I community may be able to provide adequate service only by utilizing a Zone II transmitter site, but Class B facilities would often be insufficient.

8. Opposing commenters assert that the existing classification scheme is neither inflexible nor undesirable. NAB, for example, argues that relatively few stations are affected and that Commission processing problems have already been overcome. Opponents also maintain that any problems arising out of the present classification scheme can be addressed adequately on an *ad hoc* basis. Conversely, it is suggested that some border zone communities would be unable to secure local service or would be forever relegated to lower class service as a consequence of classifying stations according to community of license. Finally, some opponents suggest that if the Commission adopts this proposal it should, as a matter of fairness, provide for grandfathered status for existing stations and/or applicants whose communities are in Zone I but whose facilities are or would be located in Zone II.

DISCUSSION

9. At present, the ability of many Class A stations to upgrade to higher classes is limited because many operate on designated Class A channels. Thus, they cannot realize the advantages of co-channel upgrades. Rather, they must look to adjacent or Intermediate Frequency ("IF") channels.⁶ As pointed out by some commenters, changing frequencies in order to upgrade is more burdensome than upgrading on existing frequencies. Moreover, as a consequence of eliminating the Commission's policy against intermixture of classes of FM stations in the same market, of its action allowing Class A operations on B/C channels, and of recent actions encouraging upgrades, many Class A stations find themselves competing for audience and advertiser revenue against more powerful stations. Removing an obstacle to Class A upgrades here will facilitate their abilities to overcome their existing competitive disadvantage.

10. Additionally, Commission action in Docket No. 80-90, as implemented by action in Docket No. 84-231,⁹ has already made possible the provision of local FM service to nearly seven hundred (700) communities. In addition, several hundred more proposals are pending. A large percentage of these new services are to be provided to small communities. Consequently, the need to ensure service to smaller communities by reserving certain channels for Class A use is no longer significant. Also, Commission policy is to encourage its broadcast licensees to upgrade their facilities in order to provide enhanced service to the public. This policy is reflected in such recent actions as the provision for daytime-only AM en-

hancement credits in Docket No. 84-231,¹⁰ the provision for adjacent and co-channel upgrades in Docket No. 85-313,¹¹ and the provision for FM channel upgrades where additional equivalent channels are available to accommodate other interested parties in Docket No. 83-1148.¹² Accordingly, we now determine that it is appropriate to amend the Rules to provide the opportunity for all classes of station to operate on channels previously restricted to Class A use.¹³

11. On a related topic, Section 74.1202(b)(1) of the Rules provides that commercial FM translator operations may be authorized on the channels designated as reserved for Class A use in Section 73.206(a). Since action herein eliminates those reservations, retention of the reference to Section 73.206(a) would be meaningless.¹⁴ Thus, Section 74.1202(b)(1) will be amended to provide that commercial FM translators may be authorized on listed channels previously reserved for Class A use.¹⁵

12. The Commission agrees that NPR and CPB raise valid concern regarding the potentially adverse impact on the public broadcast system where Class A stations seek to upgrade their facilities. In particular, the Commission is concerned about potential upgrades on Channel 221 in markets where there exists a TV Channel 6 operation. In such circumstances, the existence of the television operation effectively reduces the spectrum available for public broadcast operations at the lower portion of the NCE band, and allowing upgrades on Channel 221 would further exacerbate the problem by constricting potential public broadcast operations at the upper portion. It is appropriate to ensure the continued availability of adequate noncommercial educational radio services in TV Channel 6 markets. Thus, where the Grade B contour of the Channel 6 TV station and the 1 mV/m signal contour of the proposed upgraded facility on Channel 221 would overlap, a petitioner seeking to upgrade will bear a particularly heavy burden in demonstrating that a grant of its request to upgrade is in the public interest. In such a situation, the Commission will examine the record to determine the availability of existing and potential non-commercial educational service. As to channels other than Channel 221, the Commission does not consider upgrades to pose similar adverse consequences to public broadcasting.

13. Proposals to increase allowable maximum Class A operating power and antenna height clearly lie outside the scope of the *Notice* in this proceeding. As noted, the Commission issued the *Notice* for the limited purpose of seeking comments on proposals to adjust and review its Rules in light of its action in Docket No. 80-90. Proposals, such as that put forth by Clear Channel for blanket increases were not contemplated. It would also be inappropriate to decide such proposals at this time, because the Commission lacks an adequate record on which to base action.¹⁶ Accordingly, the Commission declines to consider amending its Rules here to provide for increases in allowable Class A power and antenna height.

14. As for the proposal to classify stations according to the zone in which the community is located, the Commission concludes that there are no substantial benefits warranting such action. The existing classification scheme has not led to significant administrative inconvenience. The Commission anticipates that it would be more disruptive to adopt the proposal to remove the transmitter location reference in Section 73.206(c) of the Rules, especially where existing stations seek to relocate their transmitters

into the zones of their communities of license. Further, after examining the record the Commission is not convinced that this proposal has significant support or would result in substantial benefit to the public. Accordingly, it is not necessary at this time to address issues concerning the grandfathered status of stations or applicants seeking to relocate transmitters into the zones of their communities.

CONCLUSION

15. Based on the Commission's consideration of the record in this proceeding and for the reasons set forth above, the Commission concludes that it is appropriate to amend Part 73. Sections 73.206 and 73.211, and Part 74, Section 74.1202, of its Rules and Regulations as set forth in Appendix B below.

16. Pursuant to the requirements of Section 604 of the Regulatory Flexibility Act, 5 U.S.C. Section 604, a Final Regulatory Flexibility analysis has been prepared and is attached hereto as Appendix C.

17. Accordingly, IT IS ORDERED, That Parts 73. and 74 of the Commission's Rules and Regulations ARE AMENDED, effective March 23, 1987, as set forth in Appendix B below.

18. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and they will not increase or decrease burden hours imposed on the public.

19. Authority for the action taken herein is contained in Section 303 of the Communications Act of 1934, as amended.

20. For further information concerning this proceeding, contact Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

The following parties submitted comments regarding dereservation of Class A channels:

Association for Broadcast Engineering Standards, Inc;
Lawrence Behr Associates, Inc;
Bilmar Communications, Inc.;
Capitol Broadcasting, Inc.;
Enterprise Publishing Company;
E.O. Roden and Associates, Inc.;
Garamella Broadcasting Company;
Hayco Broadcasting, Inc.;
Hudson Broadcasting Corporation;
Lakeland Broadcasting, Inc.;
LaPorte County Broadcasting, Inc.;

Tri-Cities Broadcasting, Inc.;
WBID Broadcasting Corporation;
Clear Channel Communications, Inc.;
Communications General Corporation;
Corporation for Public Broadcasting;
John J. Davis;
DuTreil-Rackley;
Dwyer Broadcasting, Inc.;
Federal Communications Consulting Engineers;
Eric R. Hilding;
Russel and Susan Kinsley;
KPSM FM;
LaSalle County Broadcasting, Inc.;
Doug C. McDonel;
Mountain Tower;
National Association of Broadcasters;
National Public Radio;
Southwest Communications, Inc.;
Stansell Communications, Inc.;
Triple D. Properties;
Vacationland Broadcasting Services;
West Central Broadcasting, Inc.;
Callais Broadcasting, Inc.;
EJM Broadcasting;
Stannard Broadcasting Company, Inc.; and
WKDZ, Inc.

The following party submitted reply comments regarding reservation of Class A channels:
LaSalle County Broadcasting, Inc.

The following parties submitted comments regarding designation of station classes by zones:

A.D. Ring and Associates, P.C.;
Adventure Communications, Inc.;
Americom;
Association for Broadcast Engineering Standards, Inc.;
Lawrence Behr Associates, Inc.;
DuTreil-Rackley;
Federal Communications Consulting Engineers;
Greenup County Broadcasting, Inc.;
Harvit Broadcasting Corporation;
Doug C. McDonel;
National Association of Broadcasters;
Edward A. Schober; and
Sunshine Wireless Company

The following party submitted reply comments regarding designation of station classes by zones:

LaSalle County Broadcasting, Inc.

APPENDIX B

47 CFR Parts 1, 73 and 74 are amended as follows:

1. The authority citation for Parts 1, 73 and 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303

2. Section 1.420 is amended by adding a Note following paragraph (h) to read as follows:

Section 1.420 Additional procedures in proceedings for amendment of the FM, Television for Air-Ground Table of Assignments.

Note: Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C2, C1, or C status on Channel 221 and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential noncommercial educational service.

3. Section 73.206 Classes of stations and permissible channels, is removed. [Paragraphs (b) and (c) of this section are transferred to Section 73.211 and designated paragraphs (d) and (e) therein.]

4. Section 73.211 is amended by adding new paragraphs (d) and (e) as follows:

Section 73.211 Power and antenna height requirements.

(d) Stations designated as Class A, B1, and B may be authorized in Zones I and I-A. Classes A, C2, C1, and C may be authorized in Zone II. The facilities for each class of station are listed in Section 73.211.

(e) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Class designation is based on the zone in which the station's transmitter is located, or proposed to be located.

5. Section 74.1202 is amended by revising paragraph (b)(1) to read as follows:

Section 74.1202 Frequency assignment.

(b) * * *

(1) Commercial FM translators: Channels 221, 224, 228, 232, 237, 240, 244, 249, 252, 257, 261, 265, 269, 272, 276, 280, 285, 288, 292, and 296.

APPENDIX C

Final Regulatory Flexibility Analysis

I. Need and Purpose of Rule

Commission policy encourages its broadcast licensees to upgrade their facilities in order to provide enhanced service to the public. However, because its Rules reserve certain FM commercial channels exclusively for Class A use, many Class A stations can not take advantage of policies and rules allowing them to upgrade. Although the Class A reservations were meant to assure the availability of local service to smaller communities, recent Commission action providing for a significant number of additional Class A allotments has largely addressed that need. Retention of the Class A only channels unnecessarily restricts the ability of existing Class A stations to upgrade. Abolition of the Commission's policy against intermixture of station classes in the same community and its prohibition Class A operations on Class B/C channels has resulted in a competitive disadvantage for many Class A stations which could be overcome by upgrading. Since no other parties can use channels occupied by Class A stations or incompatible channels, spectrum efficiency will be promoted by higher class operations on such channels. In order to ensure the availability of noncommercial educational spectrum, especially in markets where there exists TV Channel 6 problems, petitioners seeking to upgrade on Channel 221 whose 1mV/m coverages would overlap the television station's Grade B contours will have to demonstrate that their proposals will not significantly preclude noncommercial educational service. Among the anticipated showings are (1) that there already exists adequate noncommercial educational service or (2) that there is spectrum available for future noncommercial educational use.

II. Flexibility Issues Raised in the Comments

No significant regulatory flexibility issues were raised in the comments.

III. Significant Alternatives Considered But Not Adopted.

Comments in response to the Notice proposed a blanket increase in maximum operating power to 4kW and in antenna height to 125 meters as a more effective way to enhance Class A service. This proposal lies outside the scope of the proposal put forth in the Notice, and the Commission lacks an adequate record on which to base action amending its Rules in this regard. Further, implementation of such a proposal would require extensive and time-consuming negotiations with Canada and Mexico, and their outcomes would be uncertain.

FOOTNOTES

¹ 51 Federal Register 15927, published April 29, 1986.

² See: *Report and Order*, 94 F.C.C. 2d 152 (1983); *recon.*, 97 FCC 2d 279 (1984).

³ Issues to be subsequently addressed concern power and antenna height requirements, prediction of coverage, Intermediate Frequency (IF) separations, and miscellaneous subjects. See: *Notice*, Paragraph 5.

⁴ This proposal parallels a rule making request filed by LaSalle County Broadcasting, Inc. in response to the *Notice* in MM Docket No. 85-313. Accordingly, the Commission is considering that pleading as part of the instant docket.

⁵ *Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels*, 51 Federal Register 20290, published June 4, 1986.

⁶ See: *Memorandum Opinion and Order* in Docket 20735, FCC 85-328, released June 27, 1985.

⁷ Class A channels are authorized throughout the country, regardless of zone.

⁸ IF channels are 53 or 54 channels removed.

⁹ *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 100 F.C.C. 2d 1332 (1985).

¹⁰ 101 F.C.C. 2d 638 (1985).

¹¹ See, fn. 5, *supra*.

¹² *Amendment of the Commission's Rules Regarding the Modification of FM and Television Station Licenses*, 98 F.C.C. 2d 916 (1984).

¹³ In conjunction with deletion of the Class A reservations currently set forth in Section 73.206(a), paragraphs (b) and (c) of that section are removed and added to Section 73.211 as paragraphs (d) and (e), respectively.

¹⁴ In conjunction with the deletion of the Class A reservations, Section 73.206 will be deleted in its entirety. The reference to the reserved channels in Paragraph (b) will be removed and the remainder of that paragraph along with Paragraph (c) will be added to Section 73.211 as Paragraphs (d) and (e), respectively.

¹⁵ The suggestion of some commenters that translators be allowed on any commercial channel is beyond the scope of the Notice and will, therefore, not be addressed here.

¹⁶ The staff also determined that bilateral agreements with Canada and with Mexico would be required.